THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

WRIT PETITION Nos.19365 & 28236 of 1997

Dated 27-02-2007

W.P.No.19365 of 1997
Between:
K.Padmanabha Chary.

..... PETITIONER

AND

The Vice-Chancellor & Managing Director,
A.P.S.R.T.C. Musheerabad, Hyderabad & others.

....RESPONDENTS

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O R D E R:

Heard Sri G.Vidya Sagar, learned counsel for the petitioner. Neither Sri P.Vinayaka Swamy, learned standing counsel for the respondent-Corporation is present nor is any counter filed by them in either of these two writ petitions.

W.P.No.19365 of 1997 is filed seeking fixation of pay of the petitioner on par with his juniors. W.P.No.28236 of 1997 is filed questioning the proceedings of the second respondent dated 22-08-1997, whereby the petitioner, who was then working as Deputy Superintendent (Materials), was reverted to the post of Senior Assistant (Materials).

Facts, in brief, are that the petitioner was appointed as a junior clerk on 17-06-1964. He was temporarily promoted as an Assistant Warder on 20-10-1974. A theft took place in the area stores at Kadapa, on 31-12-1978, and alleging involvement of the petitioner herein, a charge sheet was issued on 18-01-1979 and he was placed under suspension. The petitioner was imposed, vide order dated 21-07-1983, the punishment of removal from service. Aggrieved thereby, the petitioner filed an appeal and, as he was unsuccessful in his attempts to have the orders of the disciplinary authority set aside, he filed W.P.No.13253 of 1988 before this Court, which was allowed on 22-08-1994 and the order of punishment was quashed. Aggrieved thereby, the respondent-Corporation preferred W.A.No.1093 of 1994, which was dismissed. However the order of the learned Single Judge was modified to the limited extent of

payment of back wages from the date of filing of the writ petition. The Special Leave Petition preferred thereagainst was also dismissed by the Supreme Court. Consequently, the petitioner was taken back into service on 09-02-1995 and his pay was fixed in the minimum scale of pay of a Warder on
21-02-1995. When the petitioner was placed under suspension in the year 1979, the Selection Committee had met on
27-02-1979 to select candidates for appointment to the permanent post of warder. The petitioner, who was hitherto working on temporary basis, was not considered for promotion in view of the fact that he was placed under suspension and he was informed, accordingly, vide proceedings dated
27-02-1979. After, he was fixed in the minimum scale of pay of warder on 21-02-1995, he was, thereafter, promoted as a Deputy Superintendent (Materials) on 09-03-1996.

Petitioner contends that since his juniors were further promoted to the post of Deputy Superintendent (Materials) and inasmuch he had perforce to work under them, he exercised his option on 01-07-1996 requesting that he be posted to another Zone at Vijayawada from his present place of posting at Kadapa. The petitioner was issued a notice dated 08-05-1997 informing him that he was due to retire on 31-10-1997. Seeking parity in scales of pay on par with his junior Sri K.Padmakar, the petitioner filed W.P.No.19365 of 1997 on 13-08-1997. Soon thereafter, the impugned proceedings dated 18-10-1997 was passed reverting the petitioner to the post of Senior Assistant (Materials) and consequent proceedings was issued on 24-10-1997. It is useful to refer to the contents of the proceedings dated 24-10-1997, whereby the petitioner was informed that he had been ordered to be reverted as a Senior Assistant (Materials) and directed to take over the charge of

Senior Assistant (Materials) with effect from 24-10-1997 on reversion and that he was retained at the zonal stores, Kadapa. Petitioner would specifically allege, in the affidavit filed in support of the writ petition, that this order of reversion came to be passed only because he had invoked the jurisdiction of this Court in W.P.No.19365 of 1997.

This Court, by order dated 29-10-1997, suspended the order of reversion and consequently, the petitioner retired from service, as a Deputy Superintendent (Materials) at Kadapa, on 31-10-1997. Since the entire proceedings, commencing from his suspension on 11-01-1979 culminating in the imposition of punishment on 21-07-1983, was set aside by this Court in W.P.No.13253 of 1988 dated 22-08-1994, it must be held that the petitioner was held not guilty of the charge and was entitled to be considered for promotion to the regular post of warder on par with his junior Sri K.Padmakar.

Sri G.Vidya Sagar, learned counsel for the petitioner, would assert that promotion to the post of warder is solely on the basis of seniority and, since it does not involve any process of selection, the petitioner would, automatically, be entitled to be promoted as a warder and be placed above his junior Sri K.Padmakar.

In view of the specific assertion of the learned counsel that promotion to the post of warder is solely on the basis of seniority, the petitioner would, automatically, be entitled for being promoted as a warder with effect from the date his junior was promoted and he is entitled for fixation of pay on par with his junior Sri K.Padmakar.

W.P.No.19365 of 1997 is allowed and there shall be a direction to the respondents to compute and fix the petitioner's pay on par with his junior and extend to him all consequential benefits. The exercise, in this regard, culminating in payment of amounts legitimately due to the petitioner shall be paid within a period of four

months from the date of receipt of a copy of this order.

Now coming to the order of reversion. While it is admitted that the petitioner had exercised his option for being posted at Vijayawada, the contention of Sri G.Vidya Sagar, learned counsel for the petitioner, is that the petitioner was left with little alternative but to exercise such option as he had to suffer the ignominy of working under his erstwhile juniors at Kadapa. Learned counsel would point out, rightly so, that instead of acting upon the said option, on the premise that the petitioner would not be entitled for promotion to the post of warder at Vijayawada, the respondents, while reverting him to the post of Senior Assistant (Materials), had chosen to post him at Kadapa itself.

If the option exercised by the petitioner had to be acted upon, then he ought to have been posted at Vijayawada. It was not open to the respondents to blow hot and cold. While on the one hand, they reverted him to the post of Senior Assistant (Materials) on the premise that giving effect to the option exercised by him and posting him at Vijayawada would result in his not being entitled to be promoted as Deputy Superintendent (Materials) at Vijayawada, and on the other had not transferred him to Vijayawada but had retained him at Kadapa itself. The contention of Sri G.Vidya Sagar, learned counsel for the petitioner, that the entire order was a malafide exercise of power need not be gone into in the absence of the second respondent being arrayed as a party eo-nominee. Suffice to hold that since the second respondent himself had not acted in accordance with the option exercised by the petitioner for being posted at Vijayawada, it must be held that the option exercised by the petitioner had not been acted upon. The impugned order of reversion is accordingly quashed. The petitioner shall be entitled for all benefits as a consequence thereof.

Both the writ petitions are accordingly allowed. However, in the circumstances, without costs.

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27-02-1997

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